

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK: SYRACUSE DIVISION

UNITED STATES OF AMERICA
and the STATE of NEW YORK *ex*
rel. Dr. HELENE BERNSTEIN, MD,
PHD,

Plaintiff,

v.

Dr. ROBERT SILVERMAN,
UNIVERSITY OB/GYN
ASSOCIATES, INC., CROUSE
HEALTH HOSPITAL, INC., &
CROUSE HEALTH SYSTEM, INC.,

Defendants.

Civil Action No.

5:20-cv-00630 (MAD/ATB)

**DEFENDANTS CROUSE HEALTH HOSPITAL, INC.’S AND CROUSE HEALTH
SYSTEM, INC.’S RESPONSE TO PLAINTIFF RELATOR’S
MOTION FOR LEAVE TO AMEND**

Defendants Crouse Health Hospital, Inc., and Crouse Health System, Inc. (collectively “Crouse”) respectfully submit this response to Plaintiff Relator’s (“Relator”) Motion for Leave to Amend her Complaint.

Crouse does not oppose Relator’s Motion to Amend given the liberal amendment standard under Fed. R. Civ. P. 15(a)(2),¹ but does intend to move to dismiss the proposed Amended

¹ On Friday, November 3, 2023 at 2:05 p.m., Relator’s counsel emailed Defendants’ counsel a copy of the proposed amended complaint and exhibits and asked Defendants’ counsel to inform him by 12pm on Monday, November 6, 2023, the date that his response to Defendants’ pending motions to dismiss was due after months of extensions, whether Defendants would assent to a motion to amend. This gave Defendants’ counsel less than one business day

Complaint for many of the same reasons articulated in its pending motion to dismiss the operative complaint, as well as for additional reasons prompted by the changes reflected in the proposed Amended Complaint which only exacerbate the existing pleading deficiencies. Crouse will not brief the merits in the context of this response (and will reserve responding to the merits arguments offered by Relator at pages 5 through 8 of her Motion to Amend until Crouse files its Motion to Dismiss), except to note that none of the patient records Relator attaches as exhibits to the proposed amended complaint concern or relate to Crouse. Most concern an entity, Upstate University Hospital, that is not even a defendant in this case. These documents do nothing to cure Relator's pleading deficiencies. She still fails to allege any information about even a single patient who received a fetal nonstress test—the only tests that Relator alleges Crouse was involved with—at Crouse or any claim associated with a fetal nonstress test that was purportedly submitted by Crouse to any Government Payor, much less a false or fraudulent claim.

For these and many other reasons, the proposed Amended Complaint remains deficient and while Crouse does not oppose its filing, Crouse intends to move to dismiss it and proposes the following briefing schedule, which should accommodate Relator's counsel's concerns about his client's opposition brief being due while he is out of the country over the New Year's holiday:

- Motions to Dismiss Due: 30 days from the date that the Amended Complaint is filed following the Court's ruling on Relator's Motion to Amend.
- Oppositions to Motions to Dismiss Due: 30 days from the date the Motions to Dismiss are filed.
- Replies to Motions to Dismiss Due: 14 days from the date the Oppositions are filed.

to review the amended pleading and exhibits and confer with their clients, and assumed that Defendants' counsel had availability to address these matters in the short window that Relators' counsel imposed.

Given that Defendants have already submitted extensive briefing in connection with their original Motions to Dismiss, Defendants respectfully request that the parties be relieved of the obligation to serve the pre-motion letters required by Rule 2(a) of Judge D’Agostino’s Individual Rules and Practices.

Counsel for Crouse has conferred with counsel for Defendants Dr. Robert Silverman (“Dr. Silverman”) and University OB/GYN Associates, Inc. (“University OB/GYN”) who have also indicated that their clients do not oppose the filing of the proposed Amended Complaint, that they intend to move to dismiss it as well, and that they agree with the foregoing proposed schedule.

Dated: November 7, 2023

Respectfully Submitted,

By: /s/ Laura McLane

Laura McLane (BBO # 644573)
Natasha L. Dobrott (BBO #705297)
Megan Corrigan (BBO #710869)
McDERMOTT WILL & EMERY LLP
200 Clarendon Ave, Floor 58
Boston, MA 02116
Telephone: (617) 535-4410
E-Mail: lmclane@mwe.com

Stacy A. Lutkus
New York Bar Number: 4362865
McDERMOTT WILL & EMERY LLP
One Vanderbilt Avenue
New York, New York 10017
Telephone: (212) 547-5304
E-Mail: salutkus@mwe.com

*Attorneys for Crouse Health Hospital, Inc. and
Crouse Health System, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2023 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

<p><i>Attorneys for Plaintiffs:</i> Darth M. Newman Law Offices of Darth M. Newman LLC 1140 Thorn Run Road Suite 601 Coraopolis, PA 15108 412-436-3443 Email: darth@dnewmanlaw.com</p> <p>Jonathan W. Ferris Thomas, Solomon Law Firm 693 East Avenue Rochester, NY 14607 585-272-0540 Email: jferris@theemploymentattorneys.com</p> <p><i>Attorney for USA:</i> Carl G. Eurenus U.S. Attorney's Office-Syracuse P.O. Box 7198 100 South Clinton Street Syracuse, NY 13261-7198 315-448-0663 Email: carl.eurenus@usdoj.gov</p> <p><i>Attorney for The State of New York</i> Emily Auletta New York State Attorney General- Albany The Capitol Albany, NY 12224 518-776-2342 Email: emily.auletta@ag.ny.gov</p>	<p><i>Attorney for University OB/GYN Associates, Inc.</i> Laura L. Spring CCBLaw PLLC 507 Plum Street, Suite 310 Syracuse, New York 13204 Telephone: (315)-477-6293 Email: lspring@ccblaw.com</p> <p><i>Attorney for Dr. Robert Silverman</i> David G. Burch, Jr. Barclay Damon Tower 125 East Jefferson Street Syracuse, New York 13202 Telephone: (315)-425-2788 Email: dburch@barclaydamon.com</p>
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/s/ Laura McLane